

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 16, 2009

- D054402 Adams et al. v. Small**
The summary adjudication granted against Estate Investors on their cause of action for legal malpractice is reversed. In all other respects, the judgment against Investors is affirmed. Each party shall bear its own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (5).)
Irion, J.; We Concur: Huffman, Acting P.J., Haller, J.
- D055721 In re Cassandra R., a Juvenile**
The appeal is dismissed. Aaron, J.; We Concur: Haller, Acting P.J., O'Rourke, J.
- D055309 In re L.V., a Juvenile**
The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., Benke, J.
- D054727 Infanzon v. Cardenaz**
The judgment of the trial court is affirmed.
Aaron, J.; We Concur: McIntyre, Acting P.J., Irion, J.
- D056145 Ague v. Superior Court of San Diego County/People**
The petition is denied.
- D056104 In re Dewrance on Habeas Corpus**
The petition is denied.
- D056053 In re DeWoody on Habeas Corpus**
The petition is denied.

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- D055245 Pointe San Diego Residential v. Glaser, Weil, Fink, Jacobs & Shapiro**
Upon written stipulation filed by the parties to the appeal, the appeal is dismissed as to McDermott, Will & Emery LLP only and the remittitur is ordered to issue immediately as to McDermott, Will & Emery LLP only. (Cal. Rules of Court, rule 8.244(c)(2).) Each party to bear own costs on appeal.
- D053958 People v. Jackson**
The superior court is ordered to amend the abstract of judgment to reflect 1,349 days of actual custody credits as of the time of resentencing and to forward a modified abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects the judgment is affirmed.
Huffman, J.; We Concur: McConnell, P.J., McDonald, J.
- D052978 People v. Archer**
The judgment of conviction for cultivation (11358 [count 1]) is affirmed. The judgment of conviction for simple possession (11357, subd. (a) [a lesser included offense of count 2]) is reversed.
Benke, J.; We Concur: McConnell, P.J., Nares, J. Certified for Publication.
- D054440 Imperial Asset Management, LLC v. Matthews Land, Inc./Westmount Properties, LLC**
The judgment is reversed insofar as it dismisses the breach of contract and breach of fiduciary duty causes of action against Westmount; in all other respects the judgment is affirmed. The order awarding attorney fees is reversed insofar as it awards Westmount its attorney fees; in all other respects the award of attorney fees is affirmed. Matthews to recover its costs of appeal from Westmount; Imperial to recover its costs of appeal from Matthews.
Benke, Acting P.J.; We Concur: Huffman, J., McDonald, J.
- D052827 People v. Gonzalez**
The judgment is affirmed. Nares, J.; We Concur: McConnell, P.J., McDonald, J.
- D055270 In re Leila A. et al., Juveniles**
The jurisdictional and dispositional orders are affirmed. The matter is remanded to the juvenile court with directions to instruct the Agency to complete ICWA notice and for the court to make a finding whether ICWA applies in this case. The court shall advise the parents that if the children are determined to be Indian children within the meaning of ICWA, they have the right to petition the court to invalidate any action in violation of 25 United States Code, sections 1911, 1912 and 1913. (25 U.S.C. § 1914.) Benke, Acting P.J.; We Concur: Haller, J., Aaron, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
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November 17, 2009 (Continued)

- D053806 Graciano et al. v. K.A.M.C.O. Enterprises, Inc.**
The judgment is affirmed. Irion, J.; We Concur: Benke, Acting P.J., O'Rourke, J.
- D054215 Gravelle v. Aquadek, Inc.**
The appeal is dismissed. Irion, J.; We Concur: Benke, Acting P.J., O'Rourke, J.
- D054251 Siry v. Rubin**
Judgment affirmed. Appellant to bear respondent's costs on appeal.
Haller, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.
- D055596 In re Richard Haugen on Habeas Corpus**
The petition is denied.
- D056096 In re Dagoberto Enriquez**
The petition is denied.
- D056115 In re Rene Arroyo on Habeas Corpus**
The petition is denied.
- D056236 Pope v. Superior Court of San Diego County/Center for Autism Research
Evaluation and Service**
The petition is denied.
- D056220 In re Garcia on Habeas Corpus**
The petition is denied.

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Court Furlough Day

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 19, 2009

D055795 In re Ramon P. et al., Juveniles

The appeal is dismissed.

McDonald, J.; We Concur: Huffman, Acting P.J., Aaron, J.

D052217 People v. Suarez

The judgment is reversed. Huffman, Acting P.J.; We Concur: McIntyre, J., Irion, J.

D051905 The Gifted Schools et al. v. Grahovac Construction Company et al.

The judgment is affirmed; the posttrial orders are affirmed with the exception that these orders are reversed: (1) granting an award of prevailing party contractual attorney fees to the Corporation; and (2) denying the Contractor's motion for an award of contractual attorney fees against the Corporation; and the trial court is directed to hold appropriate further proceedings to recalculate the contractual attorney fees award due to the Trust, and to calculate the appropriate award due to the Contractor from the Corporation. At these further proceedings, the trial court may allow for any appropriate offsets of ordinary costs alone as between the Contractor and the Corporation on the tort theory of negligence, on which the Corporation was the prevailing party with respect to damages and therefore prevailed with respect to such costs. (Civ. Code, §1717; §1032, subd. (a)(4).) Plaintiffs' motion for additional evidence on appeal is denied. (§909.) All parties shall bear their own costs of appeal, and we express no opinion regarding any entitlement to attorney fees on appeal.

Huffman, Acting P.J.; We Concur: McDonald, J., Aaron, J.

D053935 People v. Gastelum

The judgment is reversed and the matter is remanded with directions to the trial court that it conduct a postverdict *Marsden* hearing, allow Gastelum to state his reasons in support of his *Marsden* motion, request a response from his trial counsel, and then exercise its discretion whether to grant Gastelum's request for substitute counsel to represent him on a motion for new trial based on ineffective assistance of counsel and to otherwise proceed as authorized by law. In the event the trial court denies Gastelum's *Marsden* motion after conducting a *Marsden* hearing or grants that motion but then denies a motion for new trial filed by substitute counsel (or if substitute counsel after investigation decides there is no basis on which to file a motion for new trial), the trial court shall reinstate the judgment, amend the abstract of judgment to reflect Gastelum's direct victim restitution liability is joint and several and to omit any award of Penal Code section 2933.1 credits, and amend its August 6, 2008, minutes to state the jury found the gang special circumstance allegation was "not true."

McDonald, J.; We Concur: Huffman, Acting P.J., Nares, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

November 19, 2009 (Continued)

D052612 Raffesberger et al. v. Coast Intelligen

Upon written stipulation filed by the parties, the cross-appeal filed by Coast Intelligen, Inc. is dismissed as to cross-respondents Glen Raffesberger and Ray Raffesberger only and the remittitur is ordered to issue immediately. Each party shall bear its own costs on appeal.

D053867 Lane v. Ferrette, Alcorn, Pharies & Dorgan et al.

The order granting partial nonsuit and the judgment are affirmed. Each party shall bear its own costs on appeal.

McIntyre, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

D056140 Sanders v. Alcoholics Anonymous World Services, Inc.

The request for permission to appeal received by this court on November 12, 2009, is denied. (Code of Civ. Proc. §391.7, subd. (b).). The appeal filed on October 22, 2009, is dismissed.

D054608 People v. Booker

The opinion filed on October 28, 2009 is modified as follows: On page 18, delete the last sentence in the first full paragraph. On page 19, insert the following paragraph starting at line 3 just above Section B – Count 2. Accordingly, the abstract of judgment should be amended to strike the language doubling Booker's life term and imposing a 15 year gang enhancement and Booker should be sentenced to a prison term of life, with a minimum parole eligibility term of 30 years, plus 25 – years to life on the section 12022.53, subdivision (d) enhancement. On page 22, delete the second full paragraph addressing Count 1 and insert: On count 1, the court is directed to strike the language doubling Booker's life term and imposing a 15-year gang enhancement. The court is also directed to amend the judgment to show that the firearm enhancement under section 12022.53 was under subdivision (d), rather than subdivision (b), and that the sentence on the enhancement under subdivisions (b) and (c) were stayed under section 654. The court is directed to sentence Booker to a prison term of life, with the minimum parole eligibility term of 30 years, plus 25 years to life, on the section 12022.53 enhancement. The petition for rehearing is denied. [No change in judgment]

D055149 In re Jennifer A., a Juvenile

The judgment is affirmed. Haller, J.; We Concur: McConnell, P.J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 20, 2009

D055252 In re Marriage of Mapp

Appellant's motion to vacate the dismissal and reinstate the appeal is granted. The order of dismissal is vacated and the appeal is reinstated. Appellant's opening brief and appendix are due within 10 days from the date of this order. No further extensions will be granted.

D054975 People v. Jemal

The appeal has been reviewed by Presiding Justice McConnell and Associate Justices Nares and Haller. The procedure of *Anders v. California* (1967) 386 U.S. 738 (*Anders*) is limited to a criminal defendant's "first appeal as of right." (In re Sade C. (1996) 13 Cal. 4th 952, 978.) Appellant filed a brief pursuant to *Anders* and *People v. Wende* (1979) 25 Cal. 3d 436 in earlier appeal in this case. The appeal is accordingly dismissed.

D054815 In re A.S. et al., juveniles

The orders are affirmed. Irion, J; We Concur: McConnell, P.J., Benke, J.

D054873 In re Jaden D., a Juvenile

The March 13, 2009 order yielding jurisdiction to Wisconsin is reversed. The court is directed to hold a new jurisdictional hearing in accordance with the discussion in this opinion. McConnell, P.J.; We Concur: Huffman, J., McDonald, J.

D056057 In re Rogers on Habeas Corpus

The petition is denied.

D055024 In re K.C. et al., Juveniles

The judgment is affirmed. Aaron, J.; We Concur: O'Rourke, Acting P.J., Irion, J.

D056152 Rogers v. The Superior Court of San Diego County/People

The petition is denied.

D055953 In re Branch on Habeas Corpus

The petition is denied.

D056260 People v. Aguilar

The notice of appeal is premature because no appealable order or judgment has yet been entered. The appeal is dismissed without prejudice to refile a notice of appeal after an appealable order or judgment has been entered.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

November 20, 2009 (Continued)

D056128 McNeil Technologies, Inc. v. Superior Court of San Diego County/LaBastida et al.

The petition is denied.

D053843 City of Carlsbad et al. v. Insurance Company of the State of Pennsylvania

The judgment is affirmed. ISOP shall recover its costs on appeal.

Nares, J.; We Concur: McConnell, P.J., Aaron, J.

D056154 In re Rogers on Habeas Corpus

The petition for a writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices Nares and Haller.

We take judicial notice of San Diego Superior Court file No. SCE294316 and prior petition No. D056152. The petition is denied as duplicative.

D055737 Kropf v. Kropf

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D056031 Tiffany K. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

No timely petition for writ relief has been filed. The notice of intent is deemed to be abandoned. The case is dismissed.

D056284 City of San Diego v. Superior Court of San Diego County/Expectacion Meza

The request for stay has been read and considered by Presiding Justice McConnell and Associate Justices Haller and McDonald. This court does not issue stays where there has been no writ petition filed or evidence provided to support the issuance of a stay. The request for stay is denied.